

ARTICLE APPEARED
ON PAGE A25

THE WASHINGTON POST
17 September 1981

THE FEDE REPORT

Reagan Tightening the Rules on Leaking

By Mary Thornton
Washington Post Staff Writer

Federal employees who leak sensitive information have become subject to much tighter rules of prosecution, even if the information is not classified and the employee has not signed a secrecy oath.

Attorney General William French Smith has revoked regulations imposed by the Carter administration that narrowed the scope of circumstances under which the government would prosecute employees for divulging sensitive information, either to the news media or in their own publications or books.

The attorney general says his action is necessary to avoid "subterfuges." Critics say the move reflects an effort by the new administration to stop federal employees from leaking information about their agencies.

The Carter guidelines, issued last December, cited several factors that should be considered before prosecuting an employee, including whether the material might substantially harm an agency or endanger lives and whether the information was detailed, classified and unavailable elsewhere.

Smith said the Carter guidelines had the effect of suggesting "that some violations would be ignored."

"By announcing that the attorney general would generally not act to enforce agreements and court injunctions against those who purposefully and knowingly conspired to circumvent the pre-clearance obligations [of agencies like the CIA], the guidelines had the effect of encouraging subterfuges which would undermine the effectiveness of the review process," he said.

But former attorney general Benjamin Civiletti, who drew up the Carter guidelines, said they had not allowed employees to get around the law and release sensitive information.

"To the contrary, to retain the strength, legitimacy and legality of that dramatic remedy [prosecution], you have to exercise it with prudence and caution and you can't be bringing up dozens of silly cases so that sooner or later the courts will remove or limit that authority," he said.

The guidelines were drawn up by Civiletti after the Supreme Court's decision in February, 1980, that Frank W. Snepp III, a former CIA agent who wrote a book criticizing the agency's work during the fall of Saigon, had to turn over his profits to the government because he never obtained agency approval for the disclosures.

A former Justice Department official familiar with the decision to go forward with the guidelines said they were considered necessary because of the breadth of the Supreme Court ruling; it did not clearly define what sort of information should be considered secret or what exactly constitutes a secrecy agreement.

"We were afraid that employees would find themselves litigated against even though they didn't know they were under an agreement and did not know that the information should be considered confidential," he said.

"We thought that people would accept the regulations more readily if they thought they were going to be exercised in a reasonable way. We felt that in the long run, [the narrowing of the scope of the secrecy provisions] was in the interest of providing a strong defense and national security," he said.